

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD A. DEAN,) No. C 06-2511 JSW (PR)
Petitioner,)
vs.)
A.P. KANE, Warden,)
Respondent.)

)

**ORDER DENYING PETITION FOR A
WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner Richard Dean, a prisoner of the State of California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the Board of Prison Terms (“BPT”) denial of parole during parole suitability proceedings in 2003. This Court ordered Respondent to show cause why a writ should not issue. Respondent filed an answer, memorandum and exhibits in support thereof. Petitioner has filed a traverse. For the reasons stated below, the petition is denied on the merits.

BACKGROUND

In 1991, in Los Angeles County Superior Court, Petitioner plead guilty to second degree murder. The trial court sentenced him to a term of fifteen years to life in state prison. Petitioner's minimum parole eligibility date was December 9, 2000. In this habeas action, Petitioner does not challenge his conviction or sentence, but instead alleges that his due process rights were violated by the denial of parole by the BPT during a subsequent parole suitability hearing on August 7, 2003.

1 The BPT relied, in part, upon the following account of Petitioner's commitment
2 offense from his probation report:

3 On the date of the offense [December 8, 1990], in the county of Los
4 Angeles, the defendant murdered Eric Larson. Furthermore defendant
5 personally used a handgun.

6 The victim in this case, a male adult, was residing with the defendant's
7 estranged wife, Sandra Dean. In the early morning hours of the offense,
8 the defendant showed up with a handgun, argued with the victim, and then
9 proceeded to shoot the victim at least twice, mortally wounding the victim.

10 The defendant then left the scene, and sheriff's deputies trailed him until
11 they located him at Mc Donald's [sic] restaurant in Palmdale where they
12 apprehended him outside of the restroom. They subsequently recovered
13 the handgun plus numerous unexpended shells.

14 It turned out that the gun was stolen from the defendant's father-in-law's
15 house in Littlerock [sic] shortly before the offense. The handgun was
16 identified as a Ruger .357 Magnum but the shells used were .38 caliber
17 shells.

18 (Respondent's (hereinafter "Resp.") Exhibit (hereinafter "Ex.") 5 at 5; Resp. Ex. 8 at 2.)

19 Petitioner agreed with the facts in the record and added his own perspective:

20 Well, it happened under a diminished capacity that I was under at the time.
21 I was under a lot of stress and I called and I talked to my kids, and the
22 victim told me on the phone that he wouldn't let me talk to my kids
23 because I wasn't their father anymore. And he slammed the phone down.
24 The next thing I remember was going in the backyard, arguing with him.
25 And I basically snapped and I don't recall too much of what transpired
him.

26 (Petitioner's (hereinafter "Pet.") Ex. A, Resp. Ex. 5 at 8-9.)

27 The Board relied on Petitioner's record as detailed in the May 2003 Life Prisoner
28 Evaluation Report. (Pet. Ex. A, Resp. Ex. 5 at 13; *see* Resp. Ex. 9.) This included a
1975 juvenile commitment to the Youth Authority, from which he went AWOL and
obstructed a peace officer. (Pet. Ex. A, Resp. Ex. 5 at 13-14; Resp. Ex. 9 at 3.) As an
adult, Petitioner was convicted once for possession of a controlled substance and twice
for drunk driving. (Pet. Ex. A, Resp. Ex. 5 at 14; Resp. Ex. 9 at 3.)

29 The BPT discussed Petitioner's "post-conviction factors," which commenced with
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1 a review of the period between his last hearing, May 24, 2002 and the present hearing.
 2 (Pet. Ex. A, Resp. Ex. 5 at 14.) Petitioner's classification score per the mandatory
 3 minimum was 19, and he had recently incurred a serious disciplinary infraction "115" on
 4 March 7, 2002 for possession of inmate-manufactured alcohol. (*Id.* at 15-16.)
 5 Petitioner's prior serious disciplinary infraction was for mutual combat, a fist fight, on
 6 December 30, 1992, for which he was sentenced to 90 days loss of credit. (Resp. Ex. 9
 7 at 4.)

8 The BPT considered Petitioner's exceptional work reports from his job as a post
 9 order clerk and satisfactory work reports from his job as a cook. (Pet. Ex. A, Resp. Ex. 5
 10 at 15.) They also considered Petitioner's positive "128B" general chrono in which the
 11 correctional sergeant assigned to the CTF North Culinary Second Watch, where
 12 Petitioner has worked for nine months, noted that "he has demonstrated an outstanding
 13 ability to perform his assigned task." (*Id.* at 17.) Petitioner had also participated in
 14 various self-help programs, including Alcoholics Anonymous. (*Id.* at 16.)

15 The BPT also considered the summary of the Correctional Counselor dated May
 16 14, 2003:

17 Considering the commitment offense, prior record, and prison adjustment,
 18 the writer believes the prisoner would probably pose a moderate to low
 19 degree of threat to the public at this time if released from prison. The CDC
 20 115 rule violation report dated March 7th of 2002 concerns me since
 21 alcohol and drugs, according to the inmate's own statement, contributed
 22 heavily to the commission of the crime. I think abstinence from drugs and
 23 alcohol would be vital to Dean being successful as a minimal risk parolee
 24 to the community. Dean has participated in a variety of self-help
 25 programs, including Alcoholics Anonymous. In his letter dated May 8,
 26 1999, titled "Why I Believe I Should Be Granted a Parole Date," Dean
 27 accepts responsibility and makes no excuses for his crime. He expresses
 28 shame, guilt, and a remorse for his crime. He states that he will continue to
 attend AA in the community. Dean says that he now realizes that alcohol
 cannot be a part of his life if he is to live as a constructive, productive
 member of society.

(Pet. Ex. A, Resp. Ex. 5 at 18-19.)

Additionally, the BPT considered Petitioner's most recent psychological

1 evaluation completed by Dr. Steven J. Terrini, who notes that he “demonstrated
 2 substantial insight,” displayed “no evidence whatsoever of antisocial personality
 3 disorder,” and would have a violence potential of “no more than the average citizen in
 4 the community.” (Pet. Ex. A, Resp. Ex. 5 at 20-21.) However, Dr. Terrini also notes
 5 that Petitioner has “significant problems with alcohol and methamphetamines,” and that
 6 “his violence potential would be considerably higher” if he continued to abuse these
 7 substances. (*Id.* at 19-21.) Dr. Terrini recommended upon parole “abstinence from all
 8 illegal drugs and alcohol, monitoring, and mandatory attendance at self-help groups such
 9 as Alcoholics Anonymous or Narcotics Anonymous.” (*Id.* at 21.)

10 The Board questioned Petitioner about his parole plans, which included his plan to
 11 reside at the East Side Recovery Homes, a “sober living environment whose goal is to
 12 help men and women with drug and/or alcohol problems that are ready to change their
 13 lives.” (Pet. Ex. A, Resp. Ex. 5 at 21-22.) Petitioner provided a letter from the director,
 14 Ramona Perry, establishing that a bed would be held for him upon his release. (*Id.* at
 15 22.) Petitioner has prior work experience as a heavy equipment operator, a truck driver,
 16 and a welder, but had no current offers of employment. (*Id.* at 23.)

17 The Board also questioned Petitioner about the circumstances of his recent
 18 disciplinary infraction for possession of inmate-manufactured alcohol. (Pet. Ex. A, Resp.
 19 Ex. 5 at 24-25.) Petitioner admitted that he “fell off the wagon,” that he “made a
 20 mistake,” and that he was “only human.” (*Id.* at 25.) He also stated that he could only
 21 “do it one day at a time,” and that he “realize[s] that [alcohol] can’t be a part of [his]
 22 life.” (*Id.* at 26.)

23 Deputy District Attorney Botello from Los Angeles County opposed parole based
 24 on the circumstances of the crime, Petitioner’s “extensive alcohol/drug abuse” history,
 25 and his alleged lack of “true remorse.” (Pet. Ex. A, Resp. Ex. 5 at 28-29.) The Deputy
 26 District Attorney characterized the crime as a “cold, calculated, planned murder.” (*Id.* at
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1 29.) Botello also argued that given the “devastating” effect of alcohol on Petitioner’s
2 life, his recent alcohol-related rule violation “seriously demonstrated his inability to
3 show that he is ready to be released to the outside world.” (*Id.* at 34.) In closing,
4 Petitioner’s attorney emphasized his various positive reports during the period of
5 incarceration, his overall progress in dealing with his substance abuse problem, and his
6 stable work history prior to incarceration. (*Id.* at 35.)

7 After a recess to consider the evidence before it, the BPT found that Petitioner
8 was not suitable for parole and would pose an unreasonable risk of danger to society and
9 a threat to public safety if released from prison. (Pet. Ex. A, Resp. Ex. 5 at 39.) The
10 presiding Commissioner explained that, in deciding to deny parole, the panel considered
11 all of the information received from the public in denying parole. (*Id.*) The Board found
12 that Petitioner’s commitment offense was carried out in a “dispassionate manner” which
13 “demonstrates an exceptionally insensitive disregard for human sufferings.” (*Id.*) The
14 Board also found that the motive for the crime was “inexplicable or very trivial in
15 relation to the offense.” (*Id.*)

16 Further, the Board found that Petitioner had an escalating pattern of criminal
17 conduct and had “failed to profit from society’s previous attempts to correct his
18 criminality.” (Pet. Ex. A, Resp. Ex. 5 at 40.) The Board also found that Petitioner had a
19 history of “unstable tumultuous relationships with others” as well as problems with
20 alcohol abuse. (*Id.*) The Board noted that Petitioner had “failed to upgrade vocationally
21 as previously recommended by the Board,” and had “not sufficiently participated in
22 beneficial self-help and therapy.” (*Id.*) The Board noted Petitioner’s recent serious
23 infraction and stated that he had “failed to demonstrate evidence of positive change.”
24 (*Id.*) Finally, the Board noted that the District Attorney’s office of Los Angeles County
25 and the Sheriff’s Department of Los Angeles County had both opposed the granting of
26 parole. (*Id.* at 41.) The Board denied parole for a period of three years, relying on the
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1 above stated reasons. (*Id.*)

2 Petitioner challenged the BPT's decision in Los Angeles County Superior Court,
 3 which issued an unreasoned opinion denying Petitioner's claims. (Pet. Attachment
 4 (hereinafter "Att.") 3; Resp. Ex. 2.) The court held only that Petitioner had the burden of
 5 establishing grounds for his release, and that he had failed to show a *prima facie* case for
 6 the relief requested. (*Id.*) The California Court of Appeal for the Second Appellate
 7 District and the California Supreme Court summarily denied Petitioner's habeas petition
 8 on December 15, 2004 and February 1, 2006, respectively. (Pet. Att. 1, 2; Resp. Ex. 3,
 9 4.) Thereafter, Petitioner filed the instant federal petition for a writ of habeas corpus on
 10 April 11, 2006.

11 DISCUSSION

12 A. Standard of Review

13 The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), codified
 14 under 28 U.S.C. § 2254, provides "the exclusive vehicle for a habeas petition by a state
 15 prisoner in custody pursuant to a state court judgment, even when the petitioner is not
 16 challenging his underlying state court conviction." *White v. Lambert*, 370 F.3d 1002,
 17 1009-10 (9th Cir. 2004). Under AEDPA, this court may entertain a petition for habeas
 18 relief on behalf of a California state inmate "only on the ground that he is in custody in
 19 violation of the Constitution or laws or treaties of the United States." 28 U.S.C.
 20 § 2254(a).

21 The writ may not be granted unless the state court's adjudication of any claim on
 22 the merits: "(1) resulted in a decision that was contrary to, or involved an unreasonable
 23 application of, clearly established Federal law, as determined by the Supreme Court of
 24 the United States; or (2) resulted in a decision that was based on an unreasonable
 25 determination of the facts in light of the evidence presented in the State court
 26 proceeding." 28 U.S.C. § 2254(d). Under this deferential standard, federal habeas relief
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1 will not be granted “simply because [this] court concludes in its independent judgment
 2 that the relevant state-court decision applied clearly established federal law erroneously
 3 or incorrectly. Rather, that application must also be unreasonable.” *Williams v. Taylor*,
 4 529 U.S. 362, 411 (2000).

5 While circuit law may provide persuasive authority in determining whether the
 6 state court made an unreasonable application of Supreme Court precedent, the only
 7 definitive source of clearly established federal law under 28 U.S.C. section 2254(d) is in
 8 the holdings (as opposed to the dicta) of the Supreme Court as of the time of the state
 9 court decision. *Williams*, 529 U.S. at 412; *Clark v. Murphy*, 331 F.3d 1062, 1069 (9th
 10 Cir. 2003).

11 In determining whether the state court's decision is contrary to, or involved an
 12 unreasonable application of, clearly established federal law, a federal court looks to the
 13 decision of the highest state court to address the merits of a petitioner's claim in a
 14 reasoned decision. *LaJoie v. Thompson*, 217 F.3d 663, 669 n.7 (9th Cir. 2000). If the
 15 state court only considered state law, the federal court must ask whether state law, as
 16 explained by the state court, is “contrary to” clearly established governing federal law.
 17 See, e.g., *Lockhart v. Terhune*, 250 F.3d 1223, 1230 (9th Cir. 2001); *Hernandez v.*
 18 *Small*, 282 F.3d 1132, 1141 (9th Cir. 2002) (state court applied correct controlling
 19 authority when it relied on state court case that quoted Supreme Court for proposition
 20 squarely in accord with controlling authority). If the state court, relying on state law,
 21 correctly identified the governing federal legal rules, the federal court must ask whether
 22 the state court applied them unreasonably to the facts. See *Lockhart*, 250 F.3d at 1232.

23 The standard of review under AEDPA is somewhat different where the state court
 24 gives no reasoned explanation of its decision on a petitioner's federal claim and there is
 25 no reasoned lower court decision on the claim. In such a case, a review of the record is
 26 the only means of deciding whether the state court's decision was objectively reasonable.
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1 *See Plascencia v. Alameda*, 467 F.3d 1190, 1198 (9th Cir. 2006); *Himes v. Thompson*,
 2 336 F.3d 848, 853 (9th Cir. 2003); *Greene v. Lambert*, 288 F.3d 1081, 1088 (9th Cir.
 3 2002); *Bailey v. Newland*, 263 F.3d 1022, 1028 (9th Cir. 2001); *Delgado v. Lewis*, 223
 4 F.3d 976, 981-82 (9th Cir. 2000). When confronted with such a decision, a federal court
 5 should conduct “an independent review of the record” to determine whether the state
 6 court’s decision was an objectively unreasonable application of clearly established
 7 federal law. *Plascencia*, 467 F.3d at 1198; *Himes*, 336 F.3d at 853; *Delgado*, 223 F.3d at
 8 981-82. The federal court need not otherwise defer to the state court decision under
 9 AEDPA: “A state court’s decision on the merits concerning a question of law is, and
 10 should be, afforded respect. If there is no such decision on the merits, however, there is
 11 nothing to which to defer.” *Greene*, 288 F.3d at 1089. In sum, “while we are not
 12 required to defer to a state court’s decision when that court gives us nothing to defer to,
 13 we must still focus primarily on Supreme Court cases in deciding whether the state
 14 court’s resolution of the case constituted an unreasonable application of clearly
 15 established federal law.” *Fisher v. Roe*, 263 F.3d 906, 914 (9th Cir. 2001).

16 B. Legal Claims and Analysis

17 Petitioner claims that the BPT’s denial of parole in 2003 violated his right to due
 18 process. Petitioner also claims that the Deputy District Attorney’s opposition to his
 19 parole, an alleged breach of Petitioner’s plea agreement, violated his right to due process.

20 1. The BPT Decision

21 California’s parole scheme provides that the BPT “shall set a release date unless it
 22 determines that the gravity of the current convicted offense or offenses, or the timing and
 23 gravity of current or past convicted offense or offenses, is such that consideration of the
 24 public safety requires a more lengthy period of incarceration for this individual, and that
 25 a parole date, therefore, cannot be fixed at this meeting.” Cal. Penal Code § 3041(b). In
 26 making this determination, the BPT considers such factors as the prisoner’s social
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1 history, the commitment offense and prior criminal history, and his behavior before,
 2 during and after the crime. *See* Cal. Code Regs. tit. 15, § 2402(b) – (d).

3 The record shows, and there is no dispute, that the BPT panel afforded Petitioner
 4 and his counsel an opportunity to speak and present their case at the hearing, gave them
 5 time to review Petitioner’s central file, allowed them to present relevant documents and
 6 provided a reasoned decision denying parole. The panel concluded that Petitioner is not
 7 suitable for parole and would pose an unreasonable risk of danger to society and a threat
 8 to public safety if released from prison.

9 The panel explained that the commitment offense “demonstrate[d] an
 10 exceptionally insensitive disregard for human sufferings” and that the motive for the
 11 crime was inexplicable in comparison with the gravity of the offense. (Pet. Ex. A, Resp.
 12 Ex. 5 at 39.) The panel noted Petitioner’s recent serious infraction for possession of
 13 inmate-manufactured alcohol. (*Id.* at 40.) The panel found that Petitioner “still needs
 14 therapy in order to face, discuss, understand, and cope with stress in a nondestructive
 15 manner,” and that “until progress is made [Petitioner] continues to be unpredictable and a
 16 threat to others.” (*Id.* at 41.) Although the panel commended Petitioner for his
 17 participation in various programs, it stated that “these positive aspects of his behavior
 18 don’t outweigh the factors of unsuitability at this time.” (*Id.* at 42.)

19 2. The State Court Decisions

20 The state superior court’s decision stated that the burden was on Petitioner to
 21 establish grounds for his release, and that he had failed to show a *prima facie* case
 22 establishing his right to habeas relief. (Pet. Att. 3; Resp. Ex. 2.) The California Court of
 23 Appeal and Supreme Court summarily denied Petitioner’s habeas petitions. (Pet. Att. 1,
 24 2; Resp. Ex. 3, 4.)

25 3. The Federal Right to Due Process

26 California’s parole scheme “gives rise to a cognizable liberty interest in release on

1 “parole” which cannot be denied without adequate procedural due process protections.
 2 *Sass v. California Bd. of Prison Terms*, 461 F.3d 1123, 1127 (9th Cir. 2006) (*quoting*
 3 *McQuillion v. Duncan*, 306 F.3d 895, 902 (9th Cir. 2002)). The determination does not
 4 depend on whether a parole release date has ever been set for the inmate because “[t]he
 5 liberty interest is created, not upon the grant of a parole date, but upon the incarceration
 6 of the inmate.” *Biggs v. Terhune*, 334 F.3d 910, 914-15 (9th Cir. 2003).

7 Due process requires that “some evidence” support the parole board’s decision
 8 finding him unsuitable for parole. *Sass*, 461 F.3d at 1128 (holding that the “some
 9 evidence” standard for disciplinary hearings outlined in *Superintendent v. Hill*, 472 U.S.
 10 445, 454-55 (1985), applies to parole decisions in a section 2254 habeas petition); *Biggs*,
 11 334 F.3d at 915 (same); *McQuillion*, 306 F.2d at 904 (same). The “some evidence”
 12 standard is minimally stringent and ensures that “the record is not so devoid of evidence
 13 that the findings of [the BPT] were without support or otherwise arbitrary.” *Hill*, 472
 14 U.S. at 457. Determining whether this requirement is satisfied “does not require
 15 examination of the entire record, independent assessment of the credibility of witnesses,
 16 or weighing of the evidence.” *Id.* at 455 (quoted in *Sass*, 461 F.3d at 1128). Due process
 17 also requires that the evidence underlying the parole board’s decision have some indicia
 18 of reliability. *Biggs*, 334 F.3d at 915; *McQuillion*, 306 F.3d at 904. In sum, if the parole
 19 board’s determination of parole unsuitability is to satisfy due process, there must be
 20 some evidence, with some indicia of reliability, to support the decision. *Rosas v.*
 21 *Nielsen*, 428 F.3d 1229, 1232 (9th Cir. 2005).

22 When assessing whether a state parole board’s suitability determination was
 23 supported by “some evidence,” the court’s analysis is framed by the statutes and
 24 regulations governing parole suitability determinations in the relevant state. *Irons v.*
 25 *Carey*, 505 F.3d 846, 851 (9th Cir. 2007). Accordingly, in California, the court must
 26 look to California law to determine the findings that are necessary to deem a prisoner

unsuitable for parole. *Id.* Because there is no reasoned state court opinion in this case, this court must conduct “an independent review of the record” to determine whether the state court’s denial of Petitioner’s habeas petition was an objectively unreasonable application of clearly established federal law. *Plascencia*, 467 F.3d at 1198.

The recent California Supreme Court case of *In re Lawrence*, 44 Cal.4th 1181 (2008), clarified what California law requires the Board to find in order to deny parole: the Board must find only that the prisoner is a current threat to public safety, not that some of the specific factors in the regulations have or have not been established. *Id.* at 1212. This means that the “some evidence” test is whether there is “some evidence” that the prisoner is a threat, not whether there is “some evidence” to support particular secondary findings of the Board, for instance that the prisoner needs more time for rehabilitation. *Id.*; see *Irons v. Carey*, 505 F.3d 846, 851 (9th Cir. 2007) (when assessing whether a state parole board’s suitability determination was supported by “some evidence,” the court’s analysis is framed by the statutes and regulations governing parole suitability determinations in the relevant state).

There was evidence in the record to support the BPT's determination that Petitioner continued to pose an unreasonable risk of danger to society. First, Petitioner's act of hunting down an unarmed man in his estranged wife's house and shooting the man multiple times provides some evidence of exceptional disregard for human suffering. Second, because the victim did not seriously threaten or provoke Petitioner, the Board has some evidence to support the conclusion that the motive was inexplicable in relation to the gravity of the offense. Finally, given Petitioner's extensive history of drug and alcohol abuse and the strong connection of this abuse to his past crimes, Petitioner's recent alcohol-related infraction in prison provides clear evidence that he presents a current threat to public safety if released. Petitioner did not challenge the validity of any of this evidence, and thus there is no question as to its reliability.

1 The Court finds that the BPT's reliance on these factors, including the
2 circumstances of the crime and Petitioner's recent serious infraction, constitutes "some
3 evidence" to support the BPT's determination that Petitioner continued to present a risk of
4 danger if released to the public, and consequently that Petitioner was not suitable for
5 parole.

6 The Ninth Circuit has noted that "over time" the BPT's "continued reliance ... on
7 an unchanging factor," in particular "the circumstance of the offense and conduct prior to
8 imprisonment," would "raise serious questions involving his liberty interest in parole."
9 *Biggs*, 334 F.3d at 916-17. However, in this case the BPT's denial of parole was not only
10 based upon Petitioner's commitment offense. Here there were other supported reasons,
11 described above, for their denial of parole.

12 Based on this Court's independent review of the record, the state courts' denial of
13 Petitioner's habeas petition was not contrary to or an unreasonable application of clearly
14 established federal law because there was some reliable evidence to support the BPT's
15 denial of parole. Accordingly, habeas relief is not warranted on this claim.

16 4. Breach of Plea Agreement

17 Petitioner asserts that his plea agreement was breached when the BPT denied
18 parole because the representative of the Los Angeles County District Attorney's office
19 opposed parole at his hearings in 2000 and 2003, despite the statement of the Deputy
20 District Attorney during his guilty plea that Petitioner would be released on parole "after
21 serving the appropriate amount of time." (Petition at 3, Pet. Ex. H at 7.) He alleges that
22 the district attorney's opposition to his parole violated the plea agreement.

23 The breach of plea agreement claim is time-barred. "A 1-year period of limitation
24 shall apply to an application for a writ of habeas corpus by a person in custody pursuant
25 to the judgment of a State court." 28 U.S.C. § 2244(d)(1). A habeas petition by a state
26 prisoner challenging a decision of an administrative body, such as the BPT, is covered by
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1 the statute and the limitations period starts to run from “the date on which the factual
 2 predicate of the claim or claims presented could have been discovered through the
 3 exercise of due diligence.” 28 U.S.C. § 2244(d)(1)(D); *Shelby v. Bartlett*, 391 F.3d
 4 1061, 1066 (9th Cir. 2003); *see also Redd v. McGrath*, 343 F.3d 1077, 1081-82 (9th Cir.
 5 2003).

6 Here, the factual predicate or basis of Petitioner's claim that his plea agreement
 7 was violated was known to him no later than at the time of his 2000 hearing. He was
 8 denied parole at his parole consideration hearing in 2000 after the District Attorney's
 9 opposition, meaning the actual breach occurred no later than that date. Yet Petitioner did
 10 not file his federal habeas petition challenging the breach of the agreement within the
 11 required one-year period, even allowing for the time from 2004 through 2006 that his
 12 state habeas petitions were pending. He cannot revive the time-barred claim by asserting
 13 that the agreement, which was irrevocably breached in 2000, was breached again in
 14 2003.

15 However, even if the claim was not barred by the statute of limitations, the breach
 16 of plea bargain claim has no merit. “Plea agreements are contractual in nature and are
 17 measured by contract law standards.” *Brown v. Poole*, 337 F.3d 1155, 1159 (9th Cir.
 18 2003) (quoting *United States v. De la Fuente*, 8 F.3d 1333, 1337 (9th Cir. 1993)).
 19 Although a criminal defendant has a due process right to enforce the terms of a plea
 20 agreement, there is no evidence that Petitioner's subjective expectations about how parole
 21 would be decided were part of the plea agreement. *See Santobello v. New York*, 404 U.S.
 22 257, 261-62 (1971). Although Petitioner clearly feels that he has served an “appropriate
 23 amount of time,” he has not pointed to any language in any plea agreement that would
 24 bar the District Attorney's office from opposing his release on parole in 2003, especially
 25 given the recent occurrence of Petitioner's disciplinary infraction for possession of
 26 inmate-manufactured alcohol.

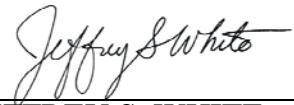
1 Petitioner's sentence upon his conviction based on his plea agreement was to an
2 indeterminate term of fifteen years to life in state prison. He has apparently received the
3 parole consideration at hearings to which he was entitled under that agreement and
4 sentence. Based on this Court's independent review of the record, the Deputy District
5 Attorney's participation in the BPT hearing where Petitioner was denied parole did not
6 violate Petitioner's due process right, and therefore the claim must fail.

7 **CONCLUSION**

8 For the reasons set forth above, the petition for a writ of habeas corpus is DENIED.
9 The Clerk shall enter judgment in favor of Respondent and close the file.

10 **IT IS SO ORDERED.**

11 DATED: July 14, 2009


12 JEFFREY S. WHITE
13 United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RICHARD A. DEAN,

Case Number: CV06-02511 JSW

Plaintiff,

CERTIFICATE OF SERVICE

V.

A.P.KANE et al,

Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 14, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Richard A. Dean
E87707
P.O. Box 689
Soledad, CA 93960

Dated: July 14, 2009

Jennifer Ottolini
Richard W. Wiekking, Clerk
By: Jennifer Ottolini, Deputy Clerk

Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk